

## CHAPTER 30 - NONCONFORMING USES

### **30.05. Purpose.**

1. Within the districts established by this ordinance or amendments that may later be adopted there may exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the effective date of this ordinance, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments. It is the intent of this ordinance to permit these nonconformities to continue until they are removed, but not to encourage their perpetuation. It is further the intent of this ordinance that nonconformities shall not be enlarged, expanded or extended, nor be used as grounds for adding other structures or uses not permitted elsewhere in the same district except as specifically provided elsewhere in this ordinance.
2. Nonconforming uses are declared by this ordinance to be incompatible with Permitted uses in the district involved.

### **30.10. Pending Building Permits and Certain Existing or Approved Nonconforming Uses.**

1. In order to avoid undue hardship, nothing in this ordinance shall require any change in the location, plans, construction, size, or designated use of any building, structure or part thereof, for which a required City building permit has been granted prior to the enactment of this ordinance, or which was lawfully permitted and for which the required building permit has been issued within an area annexed to the City prior to annexation thereof. If a building permit is revoked or for any reason becomes void, all rights granted by this subsection are extinguished and the project shall thereafter be required to conform to all the provisions of this ordinance.
2. The City Council may, by resolution duly passed prior to the effective date of this ordinance, establish certain classes of development which, notwithstanding the fact that building permits had not been issued prior to the effective date of this ordinance, shall be treated for the purpose of Section 30.10.1. as if such permit had been issued.

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3. A lawful use which would have been allowed pursuant to a master site plan or other development plan approved prior to the effective date of this ordinance by the Board of Design Review, Planning Commission or City Council, which has become a nonconforming use by this ordinance, or any other lawfully established use which has become nonconforming prior to or as a result of adoption of this ordinance, may be allowed, completed, or altered, as the case may be, as a Conditional Use, notwithstanding its nonconforming character, pursuant to the provisions stated below and the provisions and procedures of Section 40.15., except Sections 40.15.15.1.C, .2.C., and .3.C., as now or hereafter constituted. [ORD 4071; November 1999] [ORD 4584; June 2012]

Nonconforming uses are not favored by the City and therefore, the application for a Conditional Use permit pursuant to this section may be denied as inappropriate under the circumstances. In order for it to be granted, the Planning Commission or, upon review or appeal, the City Council shall make special findings of fact, in lieu of those required under Section 40.15.15.1.C., .2.C., and .3.C., herein, to support the following conclusions: [ORD 4584; June 2012]

- A. That the location, size, design and functional characteristics of the nonconforming use are such that it will be reasonably compatible with and not have a significant impact upon the livability of and development of other properties in the surrounding area, nor will it be significantly offensive or disruptive to residents or other persons acting pursuant to a conforming use allowed by this ordinance.
- B. That the nonconforming use, while not specifically permitted within the zone in which it is located, is generally consistent with the underlying general zoning classification (i.e., a residential, commercial or industrial use in corresponding Residential, Commercial or Industrial district) and is found not to be totally inconsistent with the comprehensive plan;
- C. That the allowance, completion or alteration will result in the City attaining one or more of the objectives set forth in Section 40.20.05. herein and that the benefit of meeting such objective(s) outweigh(s) any detriment of allowing or perpetuating a nonconforming use; and

## 30.10.3.

- D. That the allowance, completion or alteration does not constitute an expansion or increase in activity over and above that previously approved by a master site plan, site plan or other development plan or of that existing within an established use. [ORD 3124; May 1979]

**30.15. Existing Office Use and Structure Exemption.** Office uses and structures existing on the effective date of this ordinance are Permitted outright and are exempt from site development requirements of Sections 20.05.15., 20.10.15., 20.15.15., and 20.20.15. that vary from the requirements in existence prior to the effective date of this ordinance. Such uses and structures are not subject to the nonconforming use and structure provisions of this ordinance (i.e. Sections 30.05. and 30.60.) and may be continued, sold or rented for other office use, reconstructed, remodeled, expanded and possess all other rights as any Permitted use in this section. Any accessory office use to a primary use permitted outright or conditionally prior to the date of this ordinance may not be expanded to replace the primary use but may become a primary use if it does not encroach into floor area used by the pre-existing primary use.

**30.20. Nonconforming Lots of Record.** [ORD 4584; June 2012]

1. In any district, notwithstanding limitations imposed by other provisions of this ordinance, Permitted Principal Uses and Structures, and accessory buildings may be erected on any single lots of record after the effective date of adoption or amendment of this ordinance. Such lot must be in separate ownership and not abut other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district.

## 30.20.

2. If two or more lots, or combinations of lots and portions of lots in single ownership are of record at the effective date of this ordinance and are made nonconforming as to lot width or area by this ordinance the lots involved shall be considered to be an undivided parcel for the purposes of this ordinance. No portion of said undivided parcel which does not meet the appropriate lot area and width requirements established by this ordinance shall be conveyed, transferred or used in any manner. No division of the parcel shall be made which leaves any lot remaining with the width or area of the lot below the requirements of this ordinance; provided, however, that if a series of two or more lots or portions of lots are in single ownership and can be used or subdivided in such a manner that each comes within 10% of meeting lot area and lot width requirements for the district, each may be used as an individual lot.
3. Except as provided in Section 20.05.50.1.B. of this ordinance and notwithstanding the provisions of subsections 1. and 2., above, the use of a lot in any Residential district which has an area deficiency shall be limited to a single family dwelling.

**30.25. Nonconforming Uses of Land.**

1. Except as provided in Section 30.10. where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where such use involves no individual structure other than small or minor accessory buildings, the use may be continued so long as it remains otherwise lawful, provided:
  - A. No such nonconforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
  - B. No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance;
  - C. If any such nonconforming use of land ceases for any reason for a period of more than one year, any subsequent use of land shall conform to the regulations specified by this ordinance for the district in which such land is located;

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- D. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.
2. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming use of land or structure associated with that use which would be destroyed as a result of an action by a governmental agency, where the agency takes property through the exercise of its power of eminent domain, requires dedication of property for public purposes or limits the use of property through a required reservation of property for right-of-way purposes, may be moved to or reconstructed on the same lot and, if necessary, may be extended to an abutting lot in the same ownership in an area of land not occupied by the use on the effective date of this ordinance, provided that the use does not occupy an area greater than that occupied prior to the move. Such modification of the use or structure shall be subject to review by the Facilities Review, if within its established jurisdiction, the Planning Commission. The request for such review shall be made prior to the destruction of the use or structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July 1979] [ORD 4584; June 2012]

**30.30. Nonconforming Structures.**

- 1. Except as provided in Section 30.10. where a lawful structure exists at the effective date of adoption or amendment of this ordinance, that could not be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - A. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered in a way that will not change or will decrease its nonconformity;
  - B. Should such nonconforming structure or nonconforming portion of structure be damaged by any means to an extent of more than 50% of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance;

## 30.30.1.

C. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

2. Notwithstanding the provisions of subsection 1., above, any lawful nonconforming structure which would be destroyed as a result of an action by a governmental agency where the agency takes property through the exercise of its power of eminent domain or requires dedication of property for public purposes, may be moved or reconstructed on the same lot, and if necessary, may be extended to an abutting lot in the same ownership provided that the resulting placement of the structure does not increase the nonconformity of the structure. Such modification shall be subject to review by the Facilities Review Committee and, if within its established jurisdiction, the Planning Commission. The request for such reviews shall be made prior to the destruction of the structure and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July, 1979] [ORD 4584; June 2012]

**30.35. Nonconforming Uses of Structures.**

1. Except as provided in Section 30.10., if a lawful use involving individual buildings or structures, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
- A. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except to accommodate a changing of the use of the structure to a use permitted in the district in which it is located;
- B. Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.

## 30.35.1.

- C. If no structural alterations are made, any nonconforming use of structure and premises may be changed to another nonconforming use provided that the Planning Commission, either by general rule or by making findings in the specific case, shall find that the proposed use is more appropriate to the district than the existing nonconforming use. In permitting such change, the Planning Commission may require appropriate conditions and safeguards in accordance with the provisions of this ordinance. An appeal of the Planning Commission's decision shall be allowed in the same manner as provided in Section 50.75. [ORD 3293, November 1982].
  - D. When a nonconforming use of a structure and premises is discontinued or abandoned for one year the structure and premises shall not thereafter be used except in conformity with the regulations of the district in which it is located.
  - E. Where nonconforming use status applies to a structure and premises, removal or destruction of the structure shall eliminate the nonconforming use status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50% of the replacement cost at time of destruction.
2. Notwithstanding the provisions of subsection 1., above, any lawful use involving individual buildings or structures, or of structures and premises in combination which would be destroyed as a result of an action by a governmental agency where the agency takes property through the exercise eminent domain, requires dedication of property for public purposes, or limits the use of property through a required reservation of property for right-of-way purposes, may be continued in a structure which is moved or reconstructed in accordance with Section 30.30.2., provided that the resulting use of the structure is not enlarged or increased except under conditions allowed by Section 30.35.1.B. Such modification or movement shall be subject to review by the Facilities Review Committee and, if within its established jurisdiction, the Planning Commission. The request for such reviews shall be made prior to the destruction of the structure involved and if not made by such time the rights granted by this subsection shall be terminated. [ORD 3121; July, 1979] [ORD 4584; June 2012]

**30.40. Repairs and Maintenance.**

On any nonconforming structure or portion of a structure containing a nonconforming use, normal repairs or replacement on non-bearing walls, fixtures, wiring, or plumbing may be performed in a manner not in conflict with the other provisions of this section. However, nothing in this ordinance shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

**30.45. Uses Under Conditional Use Provisions Not Nonconforming Uses.**

A Permitted use existing before the effective date of this ordinance which is permitted only upon receiving a Conditional Use Permit under the terms of this ordinance shall not be deemed a nonconforming use in such district, but shall without further action be considered a conforming use.

**30.50. Nonconforming Parking, Loading, Signs or Other Characteristics of Use.**

If the characteristics of a use, such as signs, off-street parking, off-street loading, lighting or other matters required by this ordinance in relation to specified uses of land, water areas, structures or premises, are not in accord with the requirements of this ordinance, no change shall be made in such characteristics of use which increases nonconformity with such requirements. Change shall be permitted in the direction of conformity with such requirements.

**30.55. Determination of Nonconforming Status.**

Determination of nonconforming status shall be processed as a Director's Interpretation. If the owner of a lot, structure or use is denied nonconforming status by the Director, the owner may appeal the Director's decision to the City Council. The appeal shall be heard in the manner set forth in Section 50.65. [ORD 4462; January 2008]



**30.60. Historical Land Uses.**

1. The purpose of this section is to provide a means of exception from the provisions of Chapter 30 for those uses, structures and sites which existed prior to January 1, 1945 found by the Planning Commission, after review as provided by this section, to possess sufficient historical significance to warrant such exception. Uses, structures and sites gaining the status provided by this section shall be identified as historical uses.
2. The Commission shall review and make decisions and recommendations on all applications for the status of historical use made pursuant to this section. Prior to considering any application, the Commission shall meet for the purpose of developing and adopting the standards to be used in evaluating all applications.
3. The Commission shall develop the standards to be used in making the determinations regarding historical uses. The Commission may develop different standards for uses, structures or sites. Prior to the implementation of any standards they shall be approved by formal action of the Council. The Council may revise, delete or supplement any standards developed by the Commission.

The purpose of the standards is to provide a set of criteria articulating those characteristics which the Commission deems necessary to be possessed by a historical use. Such standards may include but are not limited to items dealing with characteristics such as past ownership, occurrence of significant historical events, architectural style, location, impact upon the historical development of the neighborhood areas as a whole or of any group, association or business and other similar considerations. [ORD 3123; July, 1979]

4. Application shall be made on a form supplied by the Planning Director and shall be accompanied by the appropriate application fee. Application may be made by the property owner, the Mayor, or any resident, or the Commission may initiate an application on its own motion. If a person other than the property owner makes the application, the property owner shall be notified in writing of the application, informed of the nature of this process and, informed of his right to fully participate in all aspects of the processing and hearings of the application.

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5. A report shall be prepared by the City staff. The form of the report shall be determined by the Commission. Upon completion of the report, the application shall be agendaed for a hearing before the Commission and copies of the report sent to the applicant and the property owner.
6. A hearing shall be held before the Commission on each application unless prior to the time of the hearing, the applicant withdraws his application. Notice of the time, date, place and nature of the hearing shall be sent by mail to the applicant and property owner. Notice of the Commission's agenda for every meeting, a brief description of each item on the agenda and the nature of the Commission's jurisdiction and powers in the matters shall be published once a week for the two weeks immediately preceding the date of the Commission's meeting. However, no date of publication shall be less than three days prior to the date of the meeting. Additional notice may be made as the Commission may determine.
7.
  - A. The Commission shall evaluate each application to determine whether the request satisfies the criteria and standards established by the Commission applicable to such request. The Commission shall make findings of fact to support the conclusions drawn in each case. The Commission may attach only those conditions to an approval which are reasonably conceived to ensure that the purpose and intent of this section are not violated. A decision to approve a request must state with specificity from which provision of Chapter 30 the use, structure or site is exempt. [ORD 4584; June 2012]
  - B. If the Commission's decision is for approval, a report of the Commission's decision and its recommendation shall be forwarded to the City Council. If the Commission's decision is for denial, a statement of that decision in writing shall be sent to the applicant within 21 calendar days of the date of the Commission's decision. The applicant or the property owner only may appeal a decision of denial to the City Council within ten (10) days of the date of the Commission's decision. The Council may hear the appeal on the record made before the Commission or may hear the matter de novo.

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8.
  - A. The Council may adopt, modify or reject any recommendation or decision of the Commission. It may also remand any matter back to the Commission for further consideration. The Council's decision shall be in writing and shall include findings of fact to support the conclusions drawn in each case.
  - B. Notice of any hearing by the Council of a Commission recommendation or decision shall be sent by regular mail in the manner provided by Section 50.75. The notice shall be substantially the same as that required to be mailed in Section 30.60.6. [ORD 3293; November, 1982]
  - C. Upon approval of an application by the Council the suffix (HU) shall attach to the zone designation for the property and such notation shall be made on the City zoning map. A record of each decision shall be maintained and made available to the public on request.
  - D. The effect of the approval is to exempt the historical use from certain restrictive provisions of Chapter 30 as specifically stated in the approval.
9. The status of historical use once established attaches to the use, structure or site and is not personal in nature, that is, ownership of the use, site or structure may be changed, nor is it transferable to a different location.

The status may be lost by violating any term or condition of the decision granting the status, by making a substantial change in the historical use from that as it existed at the time of gaining the status, or by total destruction of structures possessing the status. Loss of the status shall immediately cause the exemption from the provisions of Chapter 30 to cease and any subsequent development shall be in conformance with the terms of this ordinance.